

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 599 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BHARATSINH BALVANTSINH ZALA

Appearance:

Mr. Kamal Mehta, A.P.P. for Appellant.

MR DK MODI for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 11/08/97

ORAL JUDGEMENT

1. The respondent/accused came to be acquitted of the offences punishable under Sections 16 (1) and 7 (1) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act' for short) by the learned Joint Judicial Magistrate, First Class, Ahmedabad (Rural) at Mirzapur, in Criminal Case No. 137 of 1989 under the orders dated March 7, 1990. The above-said orders of acquittal are in challenge in the present appeal.

2. In my opinion, the question to be examined and answered is as to whether the chilli powder kept in the hotel for the purpose of preparation of the meals can be said to be an article for sale the storage of which can be said to have been prohibited under Section 7 of the Act.

3. The facts are not in dispute.

The respondent/accused happens to be the owner of a hotel known as "Hotel Kathiawad" where meals and chilled beverages were being served. The complainant Food Inspector had visited the above-said establishment on December 7, 1988 at about 5 P.M. The complainant Food Inspector was made known that at Hotel Kathiawad meals and chilled beverages were being served. The complainant-Food Inspector had gone in the kitchen and had taken the sample of chilli powder from a huge quantity maintained in the kitchen. The above-said sample was found to have been adulterated. The Court below has taken the view that the above-said storage of chilli powder was not stored for the purpose of sale which would fall within the purview of Section 7 of the Act.

4. This view accepted by the Court below appears to be in consonance with the say of the Supreme Court in the case of Om Prakash...Appellant v. Delhi Administration and another..Respondents, reported in 1976 SCC (Cri) 128. The Apex Court has while reading the provisions contained in Section 7 of the Act has taken the view that only the storage of the adulterated article for the purpose of sale is covered thereunder. It has been said by the Supreme Court that the act of storing an adulterated article of food would be an offence only if the storing is for sale. It is made further clear by the Apex Court that if adulterated article of food is stored by any person for consumption or for any purpose other than sale it would not come within the inhibition of Section 7 of the Act.

5. A similar view has been taken by the Bombay High Court in the case of Jaya Sheena Shetty, Accused-Applicant v. The State of Maharashtra, Respondent, reported in 1978 Cri.LJ 1827. This decision rendered by the learned single Judge of the Bombay High Court makes it clear that the expression "store" in Section 7 of the Act means "storing for sale". The decision makes it clear that therefore storing of adulterated article of food for any purpose other than for sale would not constitute offence under Section 16

(1) A of the Act.

6. Thus it appears that the learned Joint Judicial Magistrate was perfectly right in coming to the conclusion that no offence was made out by the prosecution. I do not see any reason whatsoever to interfere with the orders pronounced by the Court below. In my view, the present appeal requires to be dismissed. I order accordingly. The orders of acquittal pronounced by the court below are hereby upheld and confirmed.